

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noah Deutsch	Team: Team # 8	CCRB Case #: 200301026	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 02/03/2003 12:30 PM	Location of Incident: 105 Bruckner Blvd & Willis Avenue	Precinct: 40	18 Mo. SOL 8/3/2004	EO SOL 8/3/2004	
Date/Time CV Reported Mon, 02/03/2003 4:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/10/2003 2:41 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Edwin Vargas	30959	905217	040 PCT
2. SGT Christophe Schmidt	02029	907284	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Christophe Schmidt	Abuse: Sgt. Christopher Schmidt stopped and questioned § 87(2)(b)	
B.POM Edwin Vargas	Abuse: PO Edwin Vargas stopped and questioned § 87(2)(b)	
C.SGT Christophe Schmidt	Abuse: Sgt. Christopher Schmidt detained § 87(2)(b) at the 40th Precinct station house.	
D.POM Edwin Vargas	Abuse: PO Edwin Vargas detained § 87(2)(b) at the 40th Precinct station house	
E.POM Edwin Vargas	Off. Language: PO Edwin Vargas made remarks to § 87(2)(b) based upon race.	
F.POM Edwin Vargas	Discourtesy: PO Edwin Vargas spoke rudely to § 87(2)(b)	
G.POM Edwin Vargas	Force: PO Edwin Vargas tightly handcuffed § 87(2)(b)	

Synopsis

On February 3, 2003, § 87(2)(b) was stopped on a Bronx street corner by two police officers, identified as Sgt. Christopher Schmidt and PO Edwin Vargas. The officers handcuffed § 87(2)(b) and took him to the 40th Precinct. He was released a short time later and called in a civilian complaint later that night. § 87(2)(b) alleged that he was stopped and detained unlawfully, and that PO Vargas made rude and offensive remarks based on his Dominican ethnicity. He also alleged that PO Vargas tightened his handcuffs at the Precinct.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) 20, who works at § 87(2)(b), was interviewed on February 20, 2003, at the CCRB (encl. 5a-e). § 87(2)(b) stated that the incident occurred on February 2 when in fact it occurred on February 3.

On February 3, 2003, at approximately 12:00 PM, § 87(2)(b) was on his way back to Harrison Avenue in the Bronx after § 87(2)(b)

§ 87(2)(b) He was walking toward the subway. As he reached the corner of 135th Street and Willis Avenue, in the confines of the 40th Precinct, an unmarked dark-colored Ford sedan pulled up beside him. Two police officers in plain clothes stepped out of the vehicle. They were later identified as PO Edwin Vargas and Sgt. Christopher Schmidt of the 40th Precinct. § 87(2)(b) recognized that they were police officers because their guns were clearly visible, holstered at their sides, and one of them was holding a radio. They asked § 87(2)(b) where he was coming from (allegations A and B). § 87(2)(b) started to reach into his pocket for a letter that he had from the center regarding the GED, and PO Vargas told him not to put his hands in his pockets when he spoke to them.

PO Vargas was holding a paper in his hand, and he asked Sgt. Schmidt, "Does he look like him?" PO Vargas was the more active of the two officers. Sgt. Schmidt responded with words to the effect of, "Let's investigate it." PO Vargas immediately handcuffed § 87(2)(b) with no further discussion. PO Vargas frisked § 87(2)(b) and Sgt. Schmidt searched him, putting his hand inside § 87(2)(b)'s jacket pocket. § 87(2)(b) was placed in the back of the vehicle. On the way to the precinct he asked the officers several times what was going on, and they told him that they would explain when they got to the precinct. Although § 87(2)(b) was able to determine why he had been taken in, the officers never did give him an explanation.

§ 87(2)(b) was detained at the 40th Precinct (allegations C and D). First he was brought to the front desk, where officers took his pedigree information. The contents of his pockets were examined. He did have a wallet on him, the same wallet that he produced at his CCRB interview, which contains multiple picture IDs, including a § 87(2)(b) ID card, social security card, and § 87(2)(b)

While he stood before the desk, he observed PO Vargas remove the piece of paper from his Yankees jacket and ask another officer who was passing by, PO1, if § 87(2)(b) looked like the man in the picture. § 87(2)(b) stated that he was able to see the picture on the piece of paper well enough to determine that the man pictured was a light-skinned Puerto Rican who did not resemble § 87(2)(b) and, in § 87(2)(b)'s estimation, could never be mistaken for him. § 87(2)(b) again asked the officers why he was being arrested, and the officers again refused to give him an explanation. PO Vargas asked § 87(2)(b) what he did with the tattoo that he had under his eye. § 87(2)(b) told him that he has never had a tattoo. § 87(2)(b) also asked the officers about his rights, saying that he understood that he was being arrested because he was in handcuffs. § 87(2)(b) then asked for a lawyer. § 87(2)(b) felt that after he asked for a lawyer, PO Vargas appeared to become more annoyed. PO Vargas asked Sgt. Schmidt if he could take § 87(2)(b) into a room. Still handcuffed, § 87(2)(b) was taken upstairs and placed inside a room that appeared to be an

office of some kind because it had a computer and telephone in it. He could see officers in plain clothes walking back and forth outside the door. He and PO Vargas were inside the room and no one else was present.

Inside the room, PO Vargas asked him if he was Dominican. When § 87(2)(b) said yes, PO Vargas said, "I knew you were fucking Dominican. You know how much I fucking hate your race?" (allegation E). § 87(2)(b) felt that he was being discriminated against, and he told PO Vargas that he was not supposed to talk to him like that. § 87(2)(b) said that he was going to call a lawyer and have the lawyer talk to PO Vargas. PO Vargas told § 87(2)(b) that § 87(2)(b) did not need to call a "fucking lawyer" because he was just doing his job, but if he did call a lawyer "tell your lawyer not to fucking threaten me" (allegation F). § 87(2)(b) asked PO Vargas to remove his handcuffs, saying, "Take off my cuffs and then we can talk about this." PO Vargas produced the key, which was on a chain around his neck. He walked around to where § 87(2)(b) was sitting. § 87(2)(b) believed that PO Vargas was about to take off the cuffs, but instead PO Vargas tightened the handcuffs around § 87(2)(b)'s wrists, causing pain (allegation G). After baiting him in this manner, PO Vargas left and Sgt. Schmidt entered the room. § 87(2)(b) asked Sgt. Schmidt to remove the handcuffs, and Sgt. Schmidt did remove the cuffs. Sgt. Schmidt allowed § 87(2)(b) to make a phone call, and, from the phone in the office, § 87(2)(b) called his godmother, § 87(2)(b). PO Vargas reentered the room and cut the phonecall short, stating that they had made a mistake and were letting § 87(2)(b) go. § 87(2)(b) was told that the officers had confused him for a man who was wanted for murder in Brooklyn. He asked the officers for their names and badge numbers, and said that he was going to discuss what had happened to him with a lawyer. Sgt. Schmidt began questioning § 87(2)(b) about why he wanted to speak to a lawyer. § 87(2)(b) said, "Why don't you ask your partner why I want to talk to a lawyer." Both officers wrote down their ID information on a business card and gave it to § 87(2)(b), who produced it at his CCRB interview (enclosed). § 87(2)(b) was free to leave and, after being held at the 40th Precinct for 1 ½ to 2 hours, he left.

§ 87(2)(b) asked a stranger at the subway if he could recommend a lawyer and was directed to a law office on East 116th Street (at the time of his CCRB interview, § 87(2)(b) produced the card for this law office). At the office, he spoke with a woman named § 87(2)(b) later identified as § 87(2)(b). § 87(2)(b) took photographs of his wrists (after PO Vargas tightened the handcuffs, it was half an hour until Sgt. Schmidt removed them). She directed him to go down to One Police Plaza in Manhattan to file a complaint. § 87(2)(b) did go to One Police Plaza that same day, and was told to call 1-800-PD-PRIDE to file a complaint, which he did when he got back home.

At his CCRB interview, § 87(2)(b) produced a business card for the Youth Services Center where he was seeking assistance in obtaining his GED, and a card for an attorney named § 87(2)(b), with whom § 87(2)(b) had a consultation on or about February 14. § 87(2)(b) told him about what his rights are, and also referred him to the CCRB. At the CCRB, § 87(2)(b) stated that he has no interest in filing a civil suit, but wanted to consult with a lawyer to learn about his rights in a situation like the one in which he found himself. He stated that his main reason for making a complaint was to hopefully stop the same thing from happening to someone else.

§ 87(2)(b) § 87(2)(b) has never been arrested before. He lives with his mother and his sisters.

Results of Investigation

Police Officer Statements

Sgt. Christopher Schmidt

Sgt. Schmidt was interviewed on April 10, 2003, at the CCRB (encl. 8a-c).

Sgt. Schmidt did not have his memo book with him at the time of his interview, however he was "positive" that he made no entries regarding the incident with § 87(2)(b) on February 3, 2003.

On February 2, Sgt. Schmidt was working anti-crime with PO Eddie Vargas. The officers were in plain clothes and operating an unmarked vehicle. The officers were driving in the area of 135th Street and Willis Avenue when PO Vargas, the passenger, spotted an individual on the street who, he said, resembled a man wanted in connection with a shooting. PO Vargas had with him a Police Department MISD printout with a photograph of a Hispanic male. At his CCRB interview, Sgt. Schmidt produced this MISD photo, which he said was the exact paper that PO Vargas had with him while on patrol on February 2. Hand-

written below the photograph are the words, "Wanted for shooting in 44 PCT of a female. Armed and dangerous." Also written on the paper is the address § 87(2)(b), marked "In-laws" and "44 PCT", and the address § 87(2)(b) marked "brother's home" and "40 PCT." Also appearing on the printout is a NYSID number and an arrest number from 2001. Sgt. Schmidt stated that all of this information was on the paper on February 2. He further stated that they routinely carry pictures with them on patrol of individuals who are wanted in the 40th Precinct and neighboring Precincts. Other officers at the precinct have access to these MISD photos. Usually, the photos are of individuals wanted for violent crimes.

PO Vargas said to Sgt. Schmidt, "That guy looks like the guy wanted in the picture." The man was walking on the sidewalk and the officers' vehicle was ten to twenty feet away, moving at a slow rate of speed. Sgt. Schmidt was in the process of turning onto Willis Avenue from 135th Street. There was a gas station on an adjacent corner. Sgt. Schmidt asked to view the photograph and confirmed that there was a resemblance. Sgt. Schmidt later stated that he did at that time believe that the man walking on the sidewalk was the man in the photograph.

Sgt. Schmidt stopped the vehicle and both officers exited and approached the individual. They identified themselves as police officers (they both had their shields displayed on chains around their necks) and asked the man, later identified as § 87(2)(b) to come to the station house with them. They asked § 87(2)(b) if he had any weapons on him, and § 87(2)(b) said no. Both officers proceeded to frisk § 87(2)(b) for weapons and handcuff him. § 87(2)(b) had nothing illegal in his possession. § 87(2)(b) was compliant. They told § 87(2)(b) that they had reason to believe he was wanted and that he had to come to the station house with them. Sgt. Schmidt told § 87(2)(b) that if they found that he was not the wanted man, he would be released. Sgt. Schmidt described § 87(2)(b) reaction as "non-chalant," and added that he doubted that § 87(2)(b) was "thrilled," but that § 87(2)(b) remained calm. Sgt. Schmidt did not remember if § 87(2)(b) had ID on him at that time, but pointed out that, even if § 87(2)(b) had produced a valid New York State ID, they still would have taken him in because there was no name for the man on the wanted photo. Sgt. Schmidt affirmed that for all practical purposes, § 87(2)(b) was arrested at that time. He stated that he has participated in arrests of that nature before, on maybe a dozen prior occasions, where there is an observed similarity between an individual and someone who is wanted. Anti-crime in particular often works with photographs of wanted individuals.

The officers took § 87(2)(b) to the 40th Precinct without incident, and Sgt. Schmidt logged him in at the desk. Sgt. Schmidt did not recall if he observed § 87(2)(b) ID at that time or if he logged § 87(2)(b) in based on § 87(2)(b) stated identity. Sgt. Schmidt believed that they did show § 87(2)(b) the photograph of the wanted man while § 87(2)(b) was at the desk. PO Vargas took § 87(2)(b) to the juvenile room where § 87(2)(b) was handcuffed to a bar on the wall or possibly to a chair. Sgt. Schmidt remained at the front desk for "a little while." Sgt. Schmidt stated that at that time, PO Vargas may have been alone with § 87(2)(b) inside the room. Sgt. Schmidt was not sure how long PO Vargas may have been inside the room alone with § 87(2)(b) but Sgt. Schmidt remained at the desk for "a few minutes." Sgt. Schmidt had no knowledge of what may have transpired between PO Vargas and § 87(2)(b) at that time. To his knowledge, PO Vargas made no disparaging comments to § 87(2)(b).

Ultimately, PO Vargas called the 44th Precinct and was able to ascertain that the man in the photograph had been arrested and was already in custody. Sgt. Schmidt went to the juvenile room to tell § 87(2)(b) that he was free to go. He apologized to § 87(2)(b) at that time. Sgt. Schmidt was not sure where PO Vargas was at that time. Sgt. Schmidt stated that § 87(2)(b) was not questioned at all during the time that he was in the juvenile room. § 87(2)(b) never requested a lawyer. Sgt. Schmidt stated that § 87(2)(b) may have requested his ID information, and, if so, he would have provided it. On his way out of the Precinct, free to leave, § 87(2)(b) made some disparaging comments about PO Vargas in the presence of Sgt. Schmidt. § 87(2)(b) said to Sgt. Schmidt, "Your partner is an asshole."

§ 87(2)(b) was detained at the precinct for five to ten minutes. The command log notes that § 87(2)(b) was logged in at 12:45 PM and released at 12:55 PM, with a notation, "not person on photo" signed by Sgt. Schmidt. A UF-250 stop and frisk report was prepared following the incident.

PO Edwin Vargas

PO Edwin Vargas was interviewed on May 19, 2003, at the CCRB (encl. 9a-c).

PO Vargas and Sgt. Schmidt were on patrol in an unmarked car. Approaching the corner of 135th Street and Willis Avenue, PO Vargas observed a young man, later identified as § 87(2)(b) walking

north on Willis Avenue towards 136th Street. PO Vargas saw that this individual closely resembled an individual wanted in connection with a shooting in the 44th Precinct. PO Vargas had with him a copy of an arrest photo that he had obtained earlier at his command. PO Vargas explained that it is a common practice within anti-crime for a ranking officer to distribute wanted posters that have been forwarded to the 40th Precinct by adjacent commands. It is a standard crime fighting strategy, and PO Vargas takes these flyers with him out on patrol “all the time.” This particular flyer depicted what appeared to be a Hispanic male, but had no accompanying name, only a NYSID number. However, hand written beneath the photo was some information about the individual pictured, that he was wanted in connection with a shooting in the 44th Precinct. PO Vargas has made street stops based on an individual’s resemblance to a wanted poster before. PO Vargas understands this to be a lawful basis for stopping an individual.

The officers pulled the car over, got out and approached § 87(2)(b) with their shields openly displayed on chains around their necks. PO Vargas said, “Can we ask you a couple questions?” He asked § 87(2)(b) to produce ID, which he did. PO Vargas looked to compare the name on § 87(2)(b) ID with the name on the flyer, but, of course, there was no name on the flyer, only a NYSID number. PO Vargas addressed the fact that the individual pictured in the flyer has what appears to be a tattoo on the left side of his face. He stated that, although he observed no tattoo on § 87(2)(b) face, it could simply be a decal or temporary tattoo. PO Vargas told § 87(2)(b) that he resembled a wanted man, and he showed § 87(2)(b) the photograph. PO Vargas proceeded to pat him down for weapons and place him in handcuffs. As PO Vargas did this, Sgt. Schmidt explained to § 87(2)(b) what was happening. PO Vargas did not remember if Sgt. Schmidt assisted him in patting down or handcuffing § 87(2)(b). § 87(2)(b) was compliant.

When they got to the 40th Precinct, § 87(2)(b) was logged in and placed inside the juvenile room. PO Vargas was confident that § 87(2)(b) understood the reason he was being detained at the precinct. PO Vargas was alone with § 87(2)(b) briefly during that period of time. PO Vargas stated that he had no verbal altercation with § 87(2)(b) at that time. § 87(2)(b) did at one point complain that his handcuffs were too tight, and PO Vargas checked the cuffs. He was able to slide his pinky finger between his wrist and the handcuffs, so he determined that the cuffs were not too tight. PO Vargas never tightened § 87(2)(b) handcuffs. PO Vargas never made any statements based on § 87(2)(b) ethnic background. He never said anything about § 87(2)(b) being Dominican and denied the specific allegations. He used no profanity during the incident. He told § 87(2)(b) that they would have the matter straightened out in a very short time. PO Vargas did not remember § 87(2)(b) ever asking for a lawyer. Sgt. Schmidt returned shortly thereafter and told PO Vargas to contact the 44th Precinct.

PO Vargas spoke with a Lieutenant who told him that the individual in the poster had been apprehended. § 87(2)(b) was promptly released. He was in the precinct for less than ten minutes.

Photographic Evidence

The CCRB obtained photographs that were taken at the East 116th Street office of § 87(2)(b) following the incident on 2/3/03 (encl. 7a-b). The two photographs show that § 87(2)(b) had no discernible markings on his wrists following his detainment at the 40th Precinct.

Police Department Documents

Both Sgt. Schmidt and PO Vargas had **memo book entries** documenting the incident (encl. 8a and 9a). Sgt. Schmidt noted that § 87(2)(b) “looks like male wanted on photo in 44 Pct shooting.” According to Sgt. Schmidt’s memo book, § 87(2)(b) was detained at 1245 and released at 1255 after it was determined that he was not the suspect in the photograph. PO Vargas noted in his memo book that § 87(2)(b) “fit description of homicide suspect wanted in 44 PCT.” Sgt. Schmidt provided the CCRB with a copy of the **MISD wanted photograph** depicting an individual who was ultimately identified as § 87(2)(b) (encl. 10a). Handwritten at the bottom of the picture is the following: “wanted for shooting in 44 Pct. of a female. Armed & dangerous” and addresses for “in laws” and “brother’s house”. The photograph shows that § 87(2)(b) does bear a resemblance to § 87(2)(b). § 87(2)(b) reported the incident date as 2/2/03, and it was not until the 40th Precinct forwarded a copy of the **command log** documenting § 87(2)(b) s detainment at the Precinct that it was determined that the incident actually occurred on 2/3/03(encl. 12a). The command log entry shows that § 87(2)(b) was logged into the command at 1245 hours and logged out at 1255 hours. The reason appearing on the command log is to “investigate . . . for shooting (based on photo)”. Additional notation on the command log, signed by Sgt. Schmidt, reads “Not person on

photo.” § 87(2)(g) [REDACTED]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

Subject Officer Substantiation History

The CCRB substantiated allegations of stop and question and frisk and search against Sgt. Schmidt in case number 200202279. § 87(2)(g), § 87(4-b) [REDACTED]

[REDACTED] Sgt. Schmidt is in his tenth year on the force. The CCRB substantiated an allegation of force – gun as club against PO Vargas in case number 9801632. PO Vargas was found not guilty in an OATH hearing. A second substantiated allegation against PO Vargas, a discourtesy allegation from case number 200203584, has yet to be adjudicated by the NYPD. PO Vargas is in his tenth year on the force.

Conclusions and Recommendations

Credibility

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

Allegation G: PO Edwin Vargas tightly handcuffed § 87(2)(b)

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§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation G

§ 87(2)(b) [REDACTED] alleged that PO Vargas tightened his handcuffs while they were alone in the room. PO Vargas stated that, when § 87(2)(b) [REDACTED] complained that his cuffs were too tight, he checked them himself and, finding that he was able to slip his pinky finger between the cuffs and § 87(2)(b) [REDACTED] wrist, established that they were not too tight. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: